

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rule making related to behavior analysts and assistant behavior analysts

The Board of Behavioral Science hereby amends Chapter 5, “Fees,” Chapter 31, “Licensure of Marital and Family Therapists, Mental Health Counselors, Behavior Analysts, and Assistant Behavior Analysts,” and Chapter 33, “Discipline for Marital and Family Therapists, Mental Health Counselors, Behavior Analysts, and Assistant Behavior Analysts,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 147.76 and 154D.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 154D.

Purpose and Summary

These amendments add licensing rules for two new professions, behavior analysts and assistant behavior analysts. The amendments also set initial license fees at \$300 for the two new professions.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 10, 2019, as **ARC 4389C**. This rule making was also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin as **ARC 4390C** on the same date.

A public hearing was held on April 30, 2019, at 8 a.m. in Fifth Floor Conference Room 526, Lucas State Office Building, Des Moines, Iowa. Comments received at the hearing and written comments covered three issues: a request for a minimum license issuance period, a request for a reduction in the renewal fee from \$300, and a request for a grace period when renewing a license.

The fee rule in Chapter 5 was changed to address public comment. The initial license fee adopted in subrule 5.3(10) in the Adopted and Filed Emergency rule making was renumbered as subrule 5.3(3) to make it clearer to the public that the fee is for initial license only and not for renewal; subsequent subrules were also renumbered and related cross references were updated. The Board also voted to add a provision that behavior analyst and assistant behavior analyst licenses issued for less than one year would not be subject to a renewal fee for the first renewal. Renumbered subrule 5.3(3) was revised to add this provision. No other changes were made from the Adopted and Filed Emergency rule making.

Adoption of Rule Making

This rule making was adopted by the Board on June 13, 2019.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 645—Chapter 18.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on August 21, 2019, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following rule-making actions are adopted:

ITEM 1. Renumber subrules **5.3(3)** to **5.3(9)** as **5.3(4)** to **5.3(10)**.

ITEM 2. Renumber existing subrule **5.3(10)** as **5.3(3)**.

ITEM 3. Amend renumbered subrule 5.3(3) as follows:

5.3(3) License fee for license to practice as a behavior analyst or assistant behavior analyst is \$300. Behavior analyst and assistant behavior analyst licenses issued for less than one year shall not be subject to a renewal fee for the first renewal.

ITEM 4. Amend **645—Chapter 31**, title, as follows:

LICENSURE OF MARITAL AND FAMILY THERAPISTS,
~~AND~~ MENTAL HEALTH COUNSELORS, BEHAVIOR ANALYSTS, AND ASSISTANT
BEHAVIOR ANALYSTS

ITEM 5. Amend rule **645—31.1(154D)**, definitions of “Licensee” and “License expiration date,” as follows:

“*Licensee*” means any person licensed to practice as a marital and family therapist, ~~or~~ mental health counselor, behavior analyst, or assistant behavior analyst in the state of Iowa.

“*License expiration date*” means September 30 of even-numbered years for marital and family therapists and mental health counselors, and means the expiration date of the certification issued by the Behavior Analyst Certification Board for behavior analysts and assistant behavior analysts.

ITEM 6. Adopt the following new definition of “BACB” in rule **645—31.1(154D)**:

“*BACB*” means the Behavior Analyst Certification Board.

ITEM 7. Amend rule 645—31.2(154D), introductory paragraph, as follows:

645—31.2(154D) Requirements for permanent and temporary licensure as a mental health counselor or marriage and family therapist. The following criteria shall apply to licensure:

ITEM 8. Amend rule 645—31.3(154D), introductory paragraph, as follows:

645—31.3(154D) Examination requirements for mental health counselors and marital and family therapists. The following criteria shall apply to the written examination(s):

ITEM 9. Amend rule 645—31.8(154D), introductory paragraph, as follows:

645—31.8(154D) Licensure by endorsement for mental health counselors and marital and family therapists. An applicant who has been a licensed marriage and family therapist or mental health

counselor under the laws of another jurisdiction may file an application for licensure by endorsement with the board office.

ITEM 10. Adopt the following new rule 645—31.9(147):

645—31.9(147) Licensure of behavior analysts and assistant behavior analysts.

31.9(1) The applicant shall complete a board-approved application. Application forms may be obtained from the board's website (www.idph.iowa.gov/licensure) or directly from the board office. All paper applications shall be sent to the Board of Behavioral Science, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

31.9(2) The applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board.

31.9(3) Each application shall be accompanied by the appropriate fees payable to the board of behavioral science. The fees are nonrefundable.

31.9(4) For licensure as a behavior analyst, the applicant shall submit proof of current BACB certification as a board-certified behavior analyst or board-certified behavior analyst-doctoral. For licensure as an assistant behavior analyst, the applicant shall submit proof of current BACB certification as a board-certified assistant behavior analyst.

ITEM 11. Amend rule 645—31.10(147), catchwords, as follows:

645—31.10(147) License renewal for mental health counselors and marriage and family therapists.

ITEM 12. Adopt the following new rule 645—31.11(272C):

645—31.11(272C) Initial licensing, reactivation, and license renewal for behavior analysts and assistant behavior analysts.

31.11(1) An initial license for a behavior analyst or assistant behavior analyst shall be issued with the same expiration date as the applicant's current certification issued by BACB.

31.11(2) The biennial license renewal period for a behavior analyst or assistant behavior analyst shall run concurrent with the licensee's BACB certification. Each license renewed shall be given the expiration date that is on the licensee's current BACB certification. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

31.11(3) A licensee seeking renewal shall:

- a. Meet the continuing education requirements required by BACB to renew a certification.
- b. Maintain current certification as a board-certified behavior analyst, board-certified behavior analyst-doctoral, or board-certified assistant behavior analyst issued by BACB.
- c. Submit the completed renewal application and renewal fee before the license expiration date.

31.11(4) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a license. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

31.11(5) A person licensed as a behavior analyst or assistant behavior analyst shall keep the person's license certificate and wallet card displayed in a conspicuous public place at the primary site of practice.

31.11(6) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 5.3(5). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

31.11(7) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not engage in the practice of applied behavior analysis for which a license is required in Iowa until the license is reactivated. A licensee who practices applied behavior analysis in a capacity

that requires licensure in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

31.11(8) Reactivation. To apply for reactivation of an inactive license, a licensee shall submit a completed renewal application and proof of current certification and shall be assessed a reactivation fee as specified in 645—subrule 5.3(6).

ITEM 13. Amend rule 645—31.16(17A,147,272C), introductory paragraph, as follows:

645—31.16(17A,147,272C) License reactivation for mental health counselors and marital and family therapists. To apply for reactivation of an inactive license, a licensee shall:

ITEM 14. Amend rule 645—31.17(17A,147,272C) as follows:

645—31.17(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 645—31.16(17A,147,272C) or subrule 31.11(8) prior to practicing mental health counseling, ~~or~~ marital and family therapy, or applied behavior analysis in this state.

ITEM 15. Amend **645—Chapter 33**, title, as follows:

DISCIPLINE FOR MARITAL AND FAMILY THERAPISTS,
~~AND MENTAL HEALTH COUNSELORS, BEHAVIOR ANALYSTS, AND ASSISTANT~~
BEHAVIOR ANALYSTS

ITEM 16. Amend rule **645—33.1(154D)**, definition of “Licensee,” as follows:

“Licensee” means a person licensed to practice as a marital and family therapist, ~~or~~ mental health counselor, behavior analyst, or assistant behavior analyst in Iowa.

ITEM 17. Adopt the following new paragraph **33.2(1)“c”**:

c. Behavior analysts and assistant behavior analysts. Failure to comply with the current Behavior Analyst Certification Board (BACB) Professional and Ethical Compliance Code for Behavior Analysts, which is hereby adopted by reference. Copies of the Professional and Ethical Compliance Code may be obtained from the BACB website.

ITEM 18. Amend subrule 33.2(14) as follows:

33.2(14) Revocation, suspension, or other disciplinary action taken by a licensing authority or professional certifying entity of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority or certifying entity within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

ITEM 19. Amend subrule 33.2(24) as follows:

33.2(24) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a marital and family therapist, ~~or a~~ mental health counselor, behavior analyst, or assistant behavior analyst.

ITEM 20. Amend subrule 33.2(26) as follows:

33.2(26) Representing oneself as a licensed marital and family therapist, ~~or~~ mental health counselor, behavior analyst, or assistant behavior analyst when one’s license has been suspended or revoked, or when one’s license is on inactive status.

[Filed 6/21/19, effective 8/21/19]

[Published 7/17/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/17/19.